

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Compliance Assistance

4 (Amendment)

5 401 KAR 11:020. Standards of professional conduct for certified operators.

6 RELATES TO: KRS 223.160-220, 224.10-110, 224.73-110

7 STATUTORY AUTHORITY: KRS 223.160-220, 224.10-100, 224.10-110, 224.73-110

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet
9 to promulgate administrative regulations concerning the certification of water and wastewater
10 operators. This administrative regulation establishes standards for the performance of certified
11 water and wastewater operator duties.

12 Section 1. Standards of Professional Conduct. (1) In order to safeguard the life, health, and
13 welfare of the public and the environment and to establish and maintain a high standard of
14 integrity in the certified operator profession, the following standards of professional conduct
15 apply to persons certified in accordance with this 401 KAR Chapter 11[Chapter]:

16 (a) A certified operator shall, during the performance of operational duties, protect the
17 safety, health, and welfare of the public and the environment;

18 (b) A certified operator shall use reasonable care and judgment in the performance of
19 operational duties;

20 (c) If a certified operator's judgment is overruled by an employer under circumstances in

1 which the safety, health, and welfare of the public or the environment are endangered, the
2 certified operator shall inform the employer of the possible consequences;

3 (d) A certified operator shall be objective, truthful, and complete in applications, reports,
4 statements, ~~and~~ testimony provided to the cabinet; and

5 (e) A certified operator shall ensure the integrity of the samples that the operator collects,
6 prepares, or analyzes so that results shall be a true representation of water quality.

7 (2) Proof of certification. While on duty, a certified operator shall carry the cabinet-issued
8 wallet card showing the operator's current certification status.

9 (3) Maintenance of Records. If information related to the operator's employment or mailing
10 address changes from that provided in the application for certification, the certified operator shall
11 provide written notification to the cabinet within thirty (30) days.

401 KAR 11:020 "Standards of professional conduct for certified operators." approved for promulgation:

7/13/09

Date

Henry C. A. List

Henry "Hank" List, Deputy Secretary FOR
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Julia Kays, Regulations Coordinator
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 11:020

Contact Person: Aaron Keatley, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the performance of certified operator duties.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to safeguard the life, health and welfare of the public and the environment and to establish a high standard of integrity in the certified operator profession.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS Chapters 223.160-220, 224.10-110 and 224.73-110 which authorizes the cabinet to implement a certification program for water and wastewater system operators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the duties of an operator as mandated by KRS Chapters 223.160-220 and 224.73- 110.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendments contained in this proposed administrative regulation are to apply the conditions of 401 KAR 11:020 to drinking water treatment and distribution operators.

(b) The necessity of the amendment to this administrative regulation:

The amendments contained in this proposed administrative regulation are to apply the conditions of 401 KAR 11:020 to drinking water treatment and distribution operators.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendments contained in this proposed administrative regulation are to apply the conditions of 401 KAR 11:020 to drinking water treatment and distribution operators.

(d) How the amendment will assist in the effective administration of the statutes:

The amendments contained in this proposed administrative regulation are to apply the conditions of 401 KAR 11:020 to drinking water treatment and distribution operators.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified water and wastewater treatment plant, water distribution and wastewater collection system operators will be affected by this amended administrative regulation. There are approximately 4300 operators currently certified by the program. State or local governments that operate water and wastewater treatment plants, water distribution or wastewater collections systems will be indirectly affected by this amended administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to

take to comply with this administrative regulation or amendment: Certified operators as well as state and local governments, will refer to this amended administrative regulation to determine the standards for the performance of certified operator duties.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Under this amended administrative regulation, individuals should not expect to experience any additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified operators as well as state and local governments, will refer to this amended administrative regulation to gain a clear understanding of the standard of integrity in the certified operator profession. This will help the operator comply with agency standards related to the proper operation of a water or wastewater system.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs are anticipated.

(b) On a continuing basis: No additional costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amended administrative regulation is funded through agency and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be required to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not directly or indirectly establish any fees.

(9) TIERING: Is tiering applied? (Explain why or why not). This amended administrative regulation establishes standards for the performance of certified operator duties. Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 11:020

Contact Person: Aaron Keatley, Director

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This amended administrative regulation relates to state or local governments that operate water or wastewater treatment plants, water distribution or wastewater collections systems.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

Safe Drinking Water Act Title 42, Chapter 6A, Sub-chapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300j-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Primacy requirements; KRS Chapters 223.160-220, 224.10-100, 224.10-110, and 224.73-110.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation will not generate additional state or local government revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional state or local government revenue.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amended administrative regulation establishes standards for the performance of certified operator duties. No fiscal impacts are anticipated.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 11:020

Contact Person: Aaron Keatley, Director

1. Federal statute or regulation constituting the federal mandate.

Safe Drinking Water Act Title 42, Chapter 6A, Sub-chapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300j-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Primacy requirements.

2. State compliance standards.

KRS 223.160-220, KRS 224.10-110

3. Minimum or uniform standards contained in the federal mandate.

US Code Title 42, Chapter 6A, Subchapter XII, Part B, subpart 300g-8, provides the Safe Drinking Water Act (SDWA) guidelines for establishing an operator certification program at the state level (section 1419a of the Act). Final guidelines and additions to those guidelines were published in the February 5, 1999 and April 18, 2001 Federal Registers. Minimum standards for certification of operators take into account existing State programs, complexity of the water system, size of the water system, and other factors that provide an effective program at a reasonable cost. The Final Guidelines in the two Federal Registers cover public health objectives, anti-backsliding, baseline standards, system/operator classification, operator qualifications, enforcement, certification renewal and the resources needed to implement the program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable.